



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

FIL [REDACTED] Office: Nebraska Service Center

Date: APR 19 2000

IN RE: Applicant: [REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after Deportation or Removal under § 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(9)(A)(iii)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. On October 19, 1997, the applicant was ordered removed from the United States under § 235(b)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1225, after having been found inadmissible under §§ 212(a)(6)(C)(ii) of the Act, 8 U.S.C. 1182(a)(6)(C)(ii), for having falsely represented herself as a citizen of the United States. The applicant is the beneficiary of an approved immediate relative visa petition based on her marriage to a naturalized U.S. citizen in September 1997. The applicant seeks permission to reapply for admission under § 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii), to join her spouse in the United States.

The director determined that no waiver was available for the ground of inadmissibility under § 212(a)(6)(C)(ii) of the Act and denied the application accordingly.

On appeal, the applicant apologizes for her act and requests another chance to show that she is a person of good moral character.

Section 212(a)(9)(A) of the Act, 8 U.S.C. 1182(a)(9)(A), CERTAIN ALIENS PREVIOUSLY REMOVED.-provides, in part, that:

(i) ARRIVING ALIENS.-Any alien who has been ordered removed under § 235(b)(1) [1225] or at the end of proceedings under § 240 [1229a] initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) EXCEPTION.-Clauses (i) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

Section 212(a)(6)(C) of the Act provides, in part, that:

(ii) Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including § 274A) or any other Federal or State law is inadmissible.

The Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). According to the reasoning in Matter of Soriano, Interim Decision 3289 (BIA, A.G. 1996), the

provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. IIRIRA became effective on September 30, 1996 and applies to all false representation made on or after that date.

Matter of Martinez-Torres, 10 I&N Dec. 776 (Reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

The applicant attempted to procure admission into the United States at the Laredo, Texas Port of Entry on October 19, 1997 by falsely representing herself to be a citizen of the United States to an immigration officer when she is actually a citizen of Mexico. The applicant was served a Form I-860 on October 19, 1997, and her departure on that same date was verified on Form I-296. By making a false claim to U.S. citizenship the applicant is inadmissible under § 212(a)(6)(C)(ii) of the Act.

No waiver of a ground of inadmissibility under § 212(a)(6)(C)(ii) of the Act is available to an alien who made a false claim to United States citizenship. Therefore, no purpose would be served in the favorable exercise of discretion in adjudicating his application in this matter.

In discretionary matters, the applicant bears the full burden of proof. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957); Matter of Ducret, 15 I&N Dec. 620 (BIA 1976). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.